19**.

File No. B. University HH

Legal Department

B **BRANCH**

Subject:—

A Bill to amend the Bombay University Act, 1928.

(Bombay Act No. ~~XI~~ V of 1944)

page 11

1944

File No. B. University, 144.

Gen. 194 c.

402-E

Office of the R.L.A.

A draft Bill to amend the Bombay University Act, 1928 incorporating therein provisions on the lines of those proposed in the letter of the Registrar at page 1 ante and in the L.D. office note at pages 23-26 ante is sent herewith.

2. Para. 1 of the L.D. office note (page 23).- Clause 4 of the Bill provides for the insertion of the new section 48A suggested in the L.D. office note. The provision suggested by the L.D. office relates to casual vacancies occurring in the office of a Fellow or a member of any other authority of the University other than an authority specified in clauses (2) and (6) of section 7 of the Act. The provisions suggested by the Registrar at page 1 ante however cover casual vacancies occurring in all the authorities of the University. The new section 48A in clause 4 of the revised draft Bill is drafted in accordance with the proposal of the Registrar so as to cover casual vacancies occurring in all the authorities of the University.

3. Para. 3 of the L.D. office note (page 24).-Sub-section (2) of section 20 may be recast as provided in clause 3 of the revised draft Bill.

4. Para. 4 of the L.D. office note (page 25).- A suitable transitory provision providing for the termination of the period of office on such date as may be fixed by the Senate by a statute made in this behalf, of those Fellow and members of other authorities of the University who were elected, nominated or appointed because of the casual vacancies occurring in the Senate or such authority since the coming into force of the Bombay University Act, 1928, is incorporated in clause 5 of the revised draft Bill. L.D. should verify whether the clause carries out its intention.

15/8

5. Under executive instructions the Bill requires the previous approval of the Governor General before enactment. The subject matter of the Bill falls under entry 17 of the Provincial Legislative List. As the Bill does not relate to any matter in the Concurrent Legislative List it does not require to be reserved for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.D., No. 10029, dated the 21st November 1941.

H.V.D.
20/7
4c.

Office of the P.I.A.

The suggestion made by the Government of India may be accepted and clause 2 of the Bill may be deleted. The other clauses may be renumbered and the Bill may be amended as shown at pages 33-35 ante.

sd/-

Remembrancer of Legal Affairs.

P.D. to F.D. No. 2823, dated the 31st March 1942.

N.F.D.
20/7
4c.

P. 27.

Office of the R.L.A.

Para. 4 of E.D. office note at P. 125.- Attention is invited to Para. 2 of R.L.A.'s u.r. to E.D. No. 10029 dated 21st November 1941 at Page 27, in which it was made clear to the E.D. that the new section 48-A was intended to cover casual vacancies occurring in all the authorities of the University. As pointed out by E.D. at page 126, it will, therefore apply to casual vacancies in the office of a member of the Board of Post-Graduate studies, which is an authority of the University ~~xxxxxxxx~~ (vide section 7(5) of the Bombay University Act, 1928), Section 25 of the Act provides for the constitution of this Board and the appointment of its members. Also, the constitution of other University bodies under section 27 might provide for the appointment of members. The word "appointed" should therefore remain in the new section 48-A as published. The view taken by E.D. is correct.

2. Para. 5 of E.D. office note at Pr. 126-127.-The proviso proposed to be added to the new section 48-A does not quite fit in with that section. The section merely provides that a person elected, nominated or appointed to fill a casual vacancy shall hold office so long only as the Fellow or member in whose place he has been elected, nominated or appointed would have held it, if the vacancy had not occured. There is no provision made in this section or in any other section of the Act to the effect that a vacancy occurring in the office of a Fellow or member shall be filled up, as soon as may be, to which alone the proposed proviso can be added as an exception. It is therefore necessary first to provide on the lines of section 53 of the Bombay Local Boards Act, 1923, that casual vacancies in the office of a Fellow or member of any authority of the University shall Be filled up as soon as may be.

since the Secretary, E.D. in his marginal note at p. desires that the nominating authority should have discretion to fill up or not a short vacancy but should not be prohibited from filling it it is necessary to make an express provision for the purpose. The new section 48-A may therefore be recast as follows:-

"48-A Casual vacancies.- When any vacancy occurs in the office of a Fellow of member of any authority of the University before the expiry of the term of office of such Fellow or member, the vacancy shall be filled up as soon as conveniently may be by the election, nomination or appointment, as the case may be, of a Fellow or member who shall hold office so long only in whose place he has been elected, nominated or appointed would have held it, if the vacancy had not occured:-

Provided that notwithstanding anything contained in section 13, if the vacancy be of a Fellow and occurs within six months preceding the date on which the term of office of the Fellow expires the vacancy shall not be filled, if the Fellow be an elected Fellow."

3. Para. 6 of the E.D. office note at p. 127.- The fears entertained by the late Mr. Paranjpe and the Senate that the absence of a definition of the expression "casual vacancy" may lead to difficulties are unfounded. The position has been correctly stated in para. 6 of E.D. office note. In the illustration given by Mr. Paranjpe at 'A' of his letter at page 114-115 ante, it is true that A's resignation in January 1933 would be a casual vacancy but B's retirement in January 1943 would be in the ordinary course and not be a casual vacancy. Apart from the fact as pointed out in para. 6 of E.D. office note, that this anomaly would be cured by the provision proposed to be made in the new section 48-A read with the transitory provision in clause 4 of the proposed Bill at p. 123, it may be pointed out that the express words used in section 48-A viz., "a vacancy occurring before the expiry of the term of office of" clearly describe what a casual vacancy is and no further explanation of the expression is necessary.

4, Para. 7 of P.D. office note at p. 128.- Under section 13(1), II Ordinary, (a) (vii), proviso (2), of the Bombay University Act, 1928, the Fellows representing the Bombay Legislative Assembly shall hold office for the duration of the Legislative Assembly electing them. It is true that the provision made in clause 4 is, "notwithstanding anything contained in the principal Act", but in spite of the fact that the Assembly is suspended and the fact that the election of the representatives on the Senate is to be made not by the members of the Assembly but by the Assembly itself and the further fact that the said proviso(2) provides that the Fellows shall hold ~~that the said~~ office after the duration of the Legislative Assembly electing them upto the date on which new Fellows are elected by the next Assembly, it is safer to exclude the case of the Fellows representing the Legislative Assembly from the transitory provisions contained in clause 4.

Since it is now desired that the transitory provision should apply to some of the Fellows or members of other University authorities, other than those elected in a casual vacancy, there is no legal objection to the revised clause 4 as at p. 123.

5. Paras. 8 and 9 of P.D. office note at pp. 128-130. The proposed amendments in the new section 48-A providing that no election shall be held to fill a casual vacancy if the unexpired residure of the term of office of the Fellow is six months or less and the proposed amendment in clause 4 extending itsoperation to Fellowsip and members, other than those elected in a casual vacancy, are substantial amendments to the Bill as published within the meaning of Para

3 of Sec. G's letter at p. 43 ante. It would therefore be necessary to report the amendments to the Governor-General for his concurrence in the enactment of the Bill ~~Exill~~ as amendment.

6. The Statement will have to be amendment as shown at p. 39.

Sd/-
L.N.M.
6/6/44.
Remembrancer of Legal Affairs.

U.R. to N.D. No. 4-L, dated the 6th June 1944.

N.V.D.
20/7
4c.

No. 44-L.
Legal Department,
Council Hall, Poona, 29th July 1944.

From

I.H. Koos Esquire, Bar. at. Law. I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay University Act, 1928.

Sir,

With reference to your memorandum No. 201(52) dated the 19th July 1944, addressed to the General Department on the above subject, I am directed to forward herewith for the assent of His Excellency the Governor a copy of the Bill to amend the Bombay University Act, 1928, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject matter of the Bill falls under entry No. 17 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. Since the Bill does not relate to any entry in the Concurrent Legislative List, it is not necessary to reserve it for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935, or paragraph (2) of the Proclamation.

4. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

5. I also forward herewith one spare copy of the Bill.

Your obedient servant,

Sd/- I.H.K. 29/7/44.

Secretary to the Government of Bombay, Legal, Dept.

Through: The Secretary to the Government of Bombay, Educational Department.

NOTIFICATION.

Educational Department,
Bombay Castle, 1944.

No. .- In exercise of the powers conferred by subsection (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Bombay University (amendment) Act, 1944 (Bom. of 1944), shall apply to the partially excluded areas in the Province of Bombay.

By order of the Governor of Bombay,

Secretary to Government.

N.V.D.
20/7
4c.

Office of the R.L.A.

The Bill to amend the Bombay University Act, 1928, has been forwarded separately through the Educational Department to the Secretary to the Governor for obtaining the assent of His Excellency the Governor to the Bill.

2. The attention of the Educational Department is invited to the L.L. Circulars Nos. 7627, dated the 29th August 1941 and No.403, dated the 18th January 1944. Since under section 4 of the Bombay University Act, 1928, the jurisdiction of the University extends over the whole of the Province of Bombay, including the partially excluded areas therein, the R.D. is requested to consider the question of applying the proposed Act to these areas. If the R.L. decides to aply the proposed Act to those areas, it should issue the requisite notification as in the appended draft.

Sd/-

Remembrancer of Legal Affairs.

U.O. to R.D., No. 5600, dated the 9th August 1944.

N.V.D.
20/7
4c.

IMMEDIATE.

No. 201(52) -
Office of the Governor's Secretary
Government House,

From

L. Symington, Esquire, C.I.E. I.C.S.
Secretary to the Governor of Bombay,

To

The Secretary to Government,
Legal Department, Bombay.
Ganeshkhind, 3rd August 1944.

Subject: Bombay University (Amendment)
Bill, 1944.

Sir,

With reference to your letter No. 44-L, dated the 29th July 1944, on the above subject, I am directed to return herewith the copy of the Bombay University (Amendment) Bill, 1944, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provision of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

Your Obedient servant,

Sd/-

Secretary to the Governor of Bombay.

N.T.D.
20/7
4c.

Acts.

Publication of the Bombay University (Amendment) Act, 1944.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5512
Bombay Castle, 5th August 1944.

Letter to the Secretary to the Governor, No. 44-L, dated the 29th July 1944.

Letter from the Secretary to the Governor, No. 201(52), dated the 3rd August 1944.

"With reference to your letter No. 44-L, dated the 29th July 1944, on the above subject, I am directed to return herewith the copy of the Bombay University (Amendment) Bill, 1944, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

RESOLUTION.- The law should be published as Bombay Act No. XI of 1944, in the Bombay Government Gazette dated the 5th August 1944.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Education Department.

By order of the Governor of Bombay,

Sd/-
(P.N. Koos.
For (Secretary to Government.

To
The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department),

etc.

N.V.D.
20/7
4c.

37 & 59

Bom Act No XI

GOVERNOR'S BILL ~~No. XII~~ OF 1944.

A Bill to amend the Bombay University Act, 1928.

WHEREAS it is expedient to amend the Bombay University Act, 1928, for the purposes hereinafter appearing;

Bom. IV of 1928.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

Short title.

1. This Act may be called the Bombay University (Amendment) Act, 1944.

Amendment of section 20 of Bom. IV of 1928.

2. For sub-section (*2*) of section 20 of the Bombay University Act, 1928, hereinafter called "the said Act" the following sub-section shall be substituted, namely :—

Bom. IV of 1928.

"(*2*) Every member of the Syndicate shall, save as otherwise provided in section 48-A, hold office for three years :

Provided that a member elected under clause (*d*) or (*e*) of sub-section (*1*) shall cease to hold office as such member if he ceases to be a member of the Academic Council or the Senate, as the case may be."

Insertion of new section 48-A in Bom. IV of 1928.

3. After section 48 of the said Act, the following new section shall be inserted, namely :—

Casual vacancies.

"48-A. When any vacancy occurs in the office of a Fellow or member of any authority of the University before the expiry of the term of office of such Fellow or member, the vacancy shall be filled up as soon as conveniently may be by the election, nomination or appointment, as the case may be, of a Fellow or member who shall hold office so long only as the Fellow or member in whose place he has been elected, nominated or appointed would have held it, if the vacancy had not occurred :

Provided that notwithstanding anything contained in section 13, if the vacancy be of a Fellow and occurs within six months preceding the date on which the term of office of the Fellow expires the vacancy shall not be filled, if the Fellow be an elected Fellow."

Transitory provision.

4. Notwithstanding anything contained in the said Act, every Fellow other than the Fellows elected by the Bombay Legislative Assembly and every member of any authority of the University holding office on the date on which this Act comes into force, shall cease to hold office on such date as the Vice-Chancellor may appoint.

STATEMENT.

Under sub-section (*1*) of section 16 of the Bombay University Act, 1928, an ordinary Fellow holds office for five years and under sub-section (*2*) of section 20, a member of the Syndicate holds office for three years. Casual vacancies have therefore to be filled up for the full period of five or three years, as the case may be, and not for the residue of the term of office of the persons whose vacancies are filled. As a result, the number of bye-elections to the various University bodies has been increasing and the principles of rotation laid down in sections 45 and 46 of the Act and of proportional representation laid down in section 48 of the Act are defeated. If a member filling a casual vacancy is to hold office for the full term, then, for every casual vacancy so filled a separate election becomes necessary at the end of such term, and the principle of proportional representation becomes ineffectual in practice. The interests of minorities are thus adversely affected. As the number of casual vacancies increases, the principle of rotation cannot be properly applied because there is no fixed time for the retirement of a definite proportion of the members of the bodies to which this principle is made applicable by the Act. It is therefore proposed to amend the Act so as to provide that casual vacancies shall be filled only for the residue of the term of office of the persons who have ceased to be members and that the casual vacancy of an elected Fellow shall not be filled if it occurs within six months preceding the date on which his term of office expires. The proposed new section 48-A will result in the following advantages :—

(1) The system of proportional representation will be effective in all cases.

(2) Selection for the University bodies will be facilitated as the tenure of the members will be uniform.

(3) Unnecessary work on holding separate elections during the same year will be avoided.

(4) Unnecessary work, trouble and expense in the holding of an election of a Fellow will be avoided where the vacancy occurs within six months of the expiry of his term of office.

The amendment in sub-section (*2*) of section 20 of the Act is only consequential. Clause 4 of the Bill is intended to make transitory provision whereby the present disarranged timings of the various elections to the several University authorities shall be restored to the order which would have obtained if the above amendment had been in operation since the inception of the new Act.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.